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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

<p>TOM REED, and JERRY REED,</p> <p>Plaintiffs,</p> <p>v.</p> <p>THE MONTANA DEPARTMENT OF REVENUE,</p> <p>Defendant.</p>	<p>CV-23-51-H-KLD</p> <p>DEFENDANT’S MOTION TO DISMISS AMENDED COMPLAINT</p>
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Plaintiffs Tom and Jerry Reed filed a complaint against the Montana Department of Revenue, which the Department moved to dismiss based on lack of justiciability and because the suit was barred by the Eleventh Amendment. Docs. 11-12, 18-19. Although the Reeds responded substantively to one motion, they also filed an amended complaint. Doc. 28. The effect of an amended complaint is to supersede the original complaint, rendering it a nullity. *See Lacey v. Maricopa County*, 693 F.3d 896, 927 (9th Cir. 2012) (en banc) (noting the general rule that an amended complaint “super[s]edes the original complaint and renders it without legal effect.”).

Like the original complaint, the amended complaint fails to establish that the Reeds have standing or have presented a ripe case or controversy. Therefore, the Department moves to dismiss the amended complaint under Fed. R. Civ. P. 12(b)(1) and 12(h)(3). Alternatively, the Department asks the Court to invoke *Pullman* abstention and stay this case pending the outcome of the Reeds’ state court challenges to the same statute challenged in this case. This motion is supported by a brief in support.

DATED this 11th day of October 2023.

/s/ Matthew T. Cochenour
MATTHEW T. COCHENOUR
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on October 11, 2023, I electronically filed the foregoing document(s) and that they are available for viewing and downloading from the Court's CM/ECF system, and that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Matthew T. Cochenour
Matthew T. Cochenour
Attorney for Defendant